

**TESTIMONY PRESENTED BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
CONCERNING
THE MANAGEMENT OF INDIAN TRIBAL TRUST FUNDS
FEBRUARY 26, 2002
10:00 A.M. ROOM 106 DIRKSON SENATE OFFICE BUILDING**

Chairman Inouye, and distinguished members of the Senate Committee, on behalf of the United South and Eastern Tribes (USET), I thank you for the invitation to provide testimony regarding the management of Indian Tribal Trust Funds. The Indian Tribal Trust Funds matter is of great importance to Indian Country and I thank the Committee for holding this hearing and your interest in the tribal perspective.

My name is James T. Martin. I am an enrolled member of the Poarch Band of Creek Indians of Alabama. I am also the Executive Director of USET, an inter-tribal organization consisting of twenty-four federally recognized Indian Tribes from twelve states in the South and Eastern region of the United States. USET's primary function is to provide a forum for the exchange of information and ideas among its member tribes, the federal government

and other entities.

On behalf of the USET tribes, I have been afforded the opportunity to serve on the Trust Reform Task Force. As you are aware, the Trust Reform Task Force was established after the Department of Interior (DOI) Secretary Gale A. Norton presented the Bureau of Indian Trust Asset Management (BITAM) reorganization proposal and received widespread opposition to the proposal. The one point that Indian Country and the Secretary are in agreement with is that Trust Reform is a top priority and extensive change must take place to facilitate a solution.

Congress has a critical role in providing funding and meaningful direction during this Trust Reform process. To begin, I would like to thank the House and Senate Appropriations Committees for their commitment to Tribal Consultation as evidenced in the fact that they did not reprogram \$300M, as requested by the Secretary, to fund BITAM. Instead the Committee's agreed that the request would be put on hold until Congressional hearings and tribal consultation meetings were conducted. The Secretary, in her February 6, 2002 testimony before the House Resources Committee, stated the following:

"The courts expected the Department to deliver trust services based on a very high standard. Congress must recognize that meeting these expectations will require significantly more funding and resources. The courts first look to Congress for its expression of intent as to how the trust program should be managed. Congress must make clear what it envisions the responsibility of the Secretary to be, and provide the resources necessary to carry out those responsibilities, while recognizing the other financial responsibilities and mandates of the Bureau of Indian Affairs and the Department as a whole."

I commend the Secretary for the development of a bold and well-intended proposal, but must state that it was developed and presented in direct conflict with the Indian Self-Determination and Education Assistance Act (ISDEAA). Additionally, the BITAM proposal was presented with few details and Indian Country questions whether or not it would provide solutions to existing problems without creating new ones. Further, the BITAM proposal requires significant expansion of the federal bureaucracy and this expansion directly contradicts the President's Management Plan to downsize and streamline federal executive departments. I have heard nothing short of unanimous

disapproval of the BITAM proposal from those who will be most affected by its implementation - American Indian/Alaska Native Tribal governments.

Indian Country is most concerned with the fact that the BITAM proposal would significantly diminish the Bureau of Indian Affairs (BIA). The BITAM is consistently being referred to as a plan to "reorganize" the BIA, but in reality it is a proposal to fundamentally change the entire scope and mission of the BIA and is one step closer to dismantling the Bureau. To this end, I will be the first to admit that Indian Country has been calling for BIA reform for years, but to be fair we have never once said that we wanted the Bureau to be diminished in capacity or abolished. On the contrary, Indian Country has repeatedly requested funding necessary to strengthen the BIA. In the BITAM proposal the Secretary implies that the BIA cannot handle the Trust Reform effort in conjunction with providing other services. Indian Country believes that is an unfair assumption given the fact that the BIA has never been fully funded and thus has been unable to obtain the level of human resource needed to monitor, control and operate a sound trust management system.

In the BITAM proposal, the Secretary relies heavily on the Electronic Data Systems (EDS) report. In fact the Secretary has stated, that the BITAM "proposal was reviewed by EDS and

received a supportive endorsement." However, nothing in the EDS report indicated that forming a new Bureau was necessary to correct the problems inherent in the Tribal Trust Management system. The report also went on to say that there are not adequate resources (both human and monetary) to separate the trust duties from other BIA services and that there has to be an institutional willingness to change.

Upon hearing opposition to the BITAM proposal the Secretary challenged Indian Country to develop alternative proposals and that is why I am here today. I appreciate the Secretary's commitment to the Trust Reform Task Force and her attempt at tribal consultation. USET accepted the challenge and developed an alternative proposal. A copy of the USET Alternative Proposal has been provided for the Congressional record. However, I will now provide a brief overview of the major points contained in the USET proposal:

- ▶ **Retain Trust functions within the BIA:** The USET proposal would consolidate tribal trust functions under the executive supervision of a Commissioner for Tribal Trust Management. The Commissioner would serve within the Office of the Assistant Secretary for Indian Affairs and be guided by a Tribal Trust Advisory Board consisting of tribally designated representatives.

- ▶ **Separation of Trust Programs, Services, Functions and Activities (PSFAs)**
from non-trust PSFAs: The USET proposal would separate trust PSFAs from non-trust PSFAs within the BIA through the appointment of one executive responsible for trust management issues and another for Indian Program activities. The structure contemplated in this proposal is to establish two Commissioners within the Office of the Assistant Secretary for Indian Affairs. A Commissioner for Tribal Trust Management and a Commissioner for Indian Programs would be required to achieve true separation while leaving the BIA intact.
- ▶ **Commissioner for Indian Programs:** The USET proposal requires the Commissioner for Indian Programs to be nominated by the President and be subject to Senate confirmation. The Commissioner will be the executive accountable for all non-trust PSFAs.
- ▶ **Commissioner for Tribal Trust Management:** The USET proposal requires the Commissioner for Tribal Trust Management to be nominated by the President and be subject to Senate confirmation. The Commissioner will be the executive accountable for trust management PSFAs.
- ▶ **Establishment of a Tribal Trust Advisory Board:** The USET proposal requires the establishment of a Tribal Trust Advisory Board. The Board would assist the

Commissioner in developing structures, processes, guidelines and minimum standards for the trust asset management system. The Tribal Trust Advisory Board will facilitate and strengthen the government-to-government relationship.

- ▶ **Point of Trust Reform and Trust Asset Management:** The USET proposal places the responsibility for the implementation of trust reform and trust asset management at the level of the BIA Regional Offices, under the BIA Regional Director. Placing trust reform and trust asset management at the regional level honors the government-to-government relationship and allows for regional differences in the effective management of trust assets.
- ▶ **Establishment of Minimum Standards:** The USET proposal requires that the Commissioner for Tribal Trust Management work with the Tribal Trust Advisory Board and develop minimum standards that will apply to all tribal trust assets. Additionally, it will be mandatory that each Regional Director adhere to and meet the same minimum standards when managing trust assets.
- ▶ **Commission for Indian Trust Accounting:** The USET proposal requires the establishment of a Commission for Indian Trust Accounting. This would facilitate the separation of the Individual Indian Money (IIM) account management from tribal trust asset management. The IIM accounts would be managed under the supervision of

an independent Commission.

The USET proposal has been presented in several different forums and has received support from many tribes. The benefits to the USET proposal that have been identified include:

- ▶ **Reorganizes the BIA:** Trust management, trust accounting and all non-trust PSFAs would be maintained and handled separately, but still remain under the jurisdiction of the BIA. This process promotes a beneficiary driven process where accountability rests at the point of greatest sensitivity - with the tribes.

- ▶ **Strengthens the BIA:** The USET proposal is limited in scope, thus it is more cost effective and manageable. Altering the structure of the BIA while still maintaining the central functions will allow inter-reliant PSFAs to continue to progress at a steady pace. Indian Country believes that all PSFAs within the BIA are trust functions and one cannot operate independently of the other. For example, if a road is being constructed an appraisal has to be completed and the landholders must be identified to determine where and to whom lease payments are due. This example

illustrates that so-called non-trust PSFAs rely on trust asset management PSFAs and trust accounting PSFAs. Without each component the road in this example could not be constructed, but by keeping each central PSFA within one Bureau and with appropriate resources it could.

- ▶ **Beneficiary Driven Approach to Reform:** Trust reform and trust asset management would be beneficiary driven with trust responsibilities being implemented at the regional level. This process honors the government-to-government relationship that exists between tribes and the federal government.
- ▶ **Establish Minimum Standards:** Establishment of minimum standards will prevent each BIA Regional Office from applying different standards when managing trust assets. However, the USET proposal still allows flexibility to handle regional differences.
- ▶ **Enhance and Strengthen Tribal Self-Determination and Self-Governance:**
The USET alternative for reform would enhance tribal management of trust assets under the ISDEAA and the American Indian Trust Management Reform Act. Under the USET proposal Indian control of economic development and resource management would expand.

- **Establishes Accountability for Trust Reform:** Placing oversight responsibility in the Commissioner for Tribal Trust Management establishes accountability for trust reform and trust asset management in a single executive office.

The USET alternative proposal offers a flexible framework from which an effective tribal trust asset management structure can emerge. USET offers this alternative proposal as a starting point for Indian Country to begin development of a comprehensive model through dialogue and tribal consultation. It is USET's intent to allow for modification to the plan and the proposed organizational structure as needed to obtain support from Indian Country.

Indian Country is currently not supportive of any one plan, but they are unanimously opposed to BITAM. The key herein lies in the fact that Congress, the DOI, the Courts and Indian Country are all in agreement that trust reform is needed and is a priority. I believe that from this mutual conviction a trust reform plan that is acceptable to the majority can and will be developed with the involvement of all affected entities. However, Indian Country is increasingly concerned that the Secretary is in the process of implementing BITAM as we speak. This is evident in the fact that an Office of Indian Trust Transition (OITT) has been established and is being directed by Ross Swimmer. Additionally, appraisal PSFAs have

already been removed from the BIA. The Secretary has stated that, "Mr. Swimmer will be working with all entities within the Department involved in trust asset management to develop the strategic plan." This statement begs the question, "What about tribal involvement?" In the Secretary's February 6, 2002 remarks, it was stated that, "this new plan will reflect a beneficiary approach to trust management and service delivery." This statement begs another question, "How can Indian Country take the Secretary at her word given the paternalistic manner in which BITAM was developed and presented and her statements regarding the development of a strategic plan?" The single statement made by the Secretary that is encouraging to Indian Country is that, "the proposals (tribal) contain many insightful suggestions that can be potentially merged with portions of Interior's reorganization proposal to achieve broader consensus." Indian Country is hopeful that the Secretary will cease actions taken to implement BITAM until such time as tribes have had the opportunity to merge their ideas into a joint reorganization proposal.

In conclusion, USET believes that no proposal whether it be BITAM, a tribal alternative plan, or a combination thereof will be successful without a firm commitment from Congress to include funding and direction. USET further believes that proposals and/or strategic plans

developed without substantial tribal input are destined to fail. The ultimate outcome should be a trust reform proposal and strategic plan developed by the DOI, BIA, and tribes in the truest sense of tribal consultation. To this end, USET requests that Congress delay appropriating or reprogramming funds to institute BITAM in its current form.

This concludes my testimony. Thank you again for the opportunity to affect positive change to this subject of great importance. I am now available to answer any questions.